

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN THE MATTER OF:) Bankruptcy No. 08-14631
))
))
))
SHAPES/ARCH HOLDINGS, LLC,))
et al,) Camden, NJ
) May 17, 2010
Debtors.) 10:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE GLORIA M. BURNS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors: KEVIN M. McKENNA, ESQUIRE
LATSHA DAVIS YOHE & McKENNA, PC
350 Eagleview Boulevard
Suite 100
Exton, PA 19341

TIMOTHY W. GARVEY, ESQUIRE
LATSHA DAVIS YOHE & McKENNA, PC
3000 Atrium Way
Suite 251
Mt. Laurel, NJ 08054

For the Class Ten
Liquidation Trust: FELICE R. YUDKIN, ESQUIRE
COLE SCHOTZ MEISEL FORMAN &
LEONARD, PA
Court Plaza North
25 Main Street
Hackensack, NJ 07601
(via telephone)

APPEARANCES: (continued)

For the Department
of Environmental
Protection:

RACHEL JEANNE LEHR, ESQUIRE
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625
(via telephone)

Audio Operator:

MARY LAMPONE

Transcribed by:

DIANA DOMAN TRANSCRIBING
P.O. Box 129
Gibbsboro, New Jersey 08026-0129
Phone: (856) 435-7172
Fax: (856) 435-7124
Email: dianadoman@comcast.net

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

3 MR. MCKENNA: Good morning, Your Honor.

4 THE COURT: Hello. Hello, Ms. Yudkin. Ms. Yudkin?

5 MS. YUDKIN: Yes, yes, I'm here.

6 THE COURT: Yes. Good morning.

7 MS. YUDKIN: Good morning.

10 MS. LEHR: Yes, I am, but I can't hear very well,
11 but I'll just do the best I can.

12 THE COURT: Okay, Ms. Lehr, could you put your
13 appearance on the -- this is the matter of Shapes/Arch
14 Holdings. Ms. Lehr, would you put your appearance on the
15 record, please.

16 MS. LEHR: Yes, Rachel Jeanne Lehr, Deputy Attorney
17 General for the State of New Jersey, Department of
18 Environmental Protection.

19 THE COURT: And, Ms. Yudkin.

20 MS. YUDKIN: Sure. Good morning, Your Honor.

21 Felice Yudkin, Cole, Schotz, Meisel, Forman, and Leonard, on
22 behalf of the Class Ten Liquidation Trust.

23 THE COURT: And, gentlemen?

24 MR. MCKENNA: If it please the Court, Your Honor,
25 Kevin McKenna and Timothy Garvey, Latsha, Davis, Yohe and

1 McKenna on behalf of the debtors.

2 MR. GARVEY: Yes, Timothy Garvey.

3 THE COURT: All right. Who wants to go forward, Mr.
4 McKenna?

5 MR. MCKENNA: Yes, Your Honor. May it please the
6 Court, this is a motion to disallow or expunge for violation
7 of a scheduling order, Your Honor.

8 We had a conference with the Court back on January
9 5th regarding discovery. The Court entered an order on
10 January 13th, 2010. The order required the NJDEP to resolve
11 all discovery disputes with us by March 19th, 2010, and the
12 Court permitted us to file a motion if the discovery disputes
13 were not resolved. They were not resolved, Your Honor.

14 We filed this motion on April the 9th, 2010. We
15 were all set to come in here and argue on this morning, and
16 Friday I received a call from Rick Engel from the NJDEP
17 advising us that the State would agree to settle this matter.
18 So we wanted to come in here and just document that and then
19 ask the Court for an additional 60 days so we could work on
20 that.

21 I just wanted to advise the Court that Mr. Engel
22 advised me and he -- he sent me an email that the State would
23 settle the NRV claim of the State against the debtor for all
24 sites, plural, for any discharge emanating from the 9000 River
25 Road property which is owned by the debtors. This would take

1 into account migration of the plume and cover everything. Mr.
2 Engel sent me an email, Your Honor, at 2:52 p.m. on Friday,
3 May the 14th.

4 "Kevin, as we just discussed, I have approval from
5 the New Jersey Department of Environmental Protection to
6 accept in full settlement of your client's liability for
7 Natural Resource Damages from the sites at issue that we have
8 been discussing for several years now. In return for that
9 money, your client will receive a full release from DEP.

10 "As we also discussed, DEP is still willing to take
11 the \$50,000 that I understand is being held as part of the
12 bankruptcy proceedings to compensate DEP for remediation costs
13 at various sites that have been the subject of letters between
14 our offices."

15 Your Honor, according to the plan, they were
16 supposed to file an amended proof of claim within five days
17 and never did. So just because of the lateness of the call on
18 Friday and everything, I need time to talk to our people to
19 reconfirm our authority, and I intentionally left out the
20 amount that they offered to settle, but it was a number that
21 we had previously offered and Your Honor was aware of, they
22 rejected it.

23 THE COURT: So in essence you think if you have a
24 little bit of time to go over it with your client and discuss
25 it with Mr. Engel, you would be in a position hopefully to

1 resolve the matter?

2 MR. MCKENNA: Yes, Your Honor. We want time to
3 draft a release, for a complete release. So with the Court's
4 indulgence, we would ask for 60 days so we could work on that.

5 THE COURT: Okay. Ms. Lehr, are you in agreement
6 with what's been represented?

7 MS. LEHR: Definitely.

8 THE COURT: All right.

9 MS. LEHR: And I appreciate the opportunity for the
10 extension.

11 THE COURT: Okay. Ms. Yudkin, anything you want to
12 add?

13 MS. YUDKIN: No, Your Honor.

14 THE COURT: All right. Despite the things that have
15 happened with regard to the discovery issues, I think if
16 you're able to get this matter resolved, that's certainly in
17 everybody's best interest.

18 MR. MCKENNA: Yes. So we would ask Your Honor just
19 to hold the motion in abeyance while we --

20 THE COURT: Right. Well, I'll reschedule the motion
21 for a date -- in 60 days which I'll give you today. And then
22 if you haven't submitted a consent order that resolves all the
23 issues by that date, we can sort of have another status to see
24 where we are.

25 MR. MCKENNA: Very good, Your Honor.

1 MS. LEHR: Thank you, Your Honor.

2 THE COURT: July 19th?

3 MR. MCKENNA: How about the 26th? Would the 27th be
4 okay, Your Honor?

5 THE COURT: That would be fine. July 27th at 10:00,
6 is that okay for you, Ms. Lehr?

7 MS. LEHR: Yes. I can't believe we're already into
8 July. I'm still back around Labor Day.

9 THE COURT: Well, hopefully --

10 MS. LEHR: But thank -- thank you so much.

11 THE COURT: -- well, hopefully, you'll resolve it
12 and you won't have to worry about coming in July.

13 MS. LEHR: Wouldn't that be wonderful. I certainly
14 will do my best.

15 THE COURT: All right. And, Ms. Yudkin, is that
16 okay for you?

17 MS. YUDKIN: Yes, Your Honor.

18 THE COURT: All right. Thank you. I'll look for
19 the order. Thank you.

20 MR. MCKENNA: Thank you, Your Honor.

21 MS. LEHR: Thank you, all.

22 MS. YUDKIN: Thank you.

23 THE COURT: Thank you.

24 (Proceedings concluded at 10:34 a.m.)

25 * * *

C E R T I F I C A T I O N

5 I, Lois A. Vitarelli, court approved transcriber,
6 certify that the foregoing is a correct transcript from the
7 official electronic sound recording of the proceedings in the
8 above-entitled matter.

12 /S/ Lois A. Vitarelli June 1, 2010
13 LOIS A. VITARELLI
14 DIANA DOMAN TRANSCRIBING